

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

FEBRUARY 9, 2004

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
MICHAEL REIS
STEPHEN RIVERA
JOSEPH MINUTA

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

ABSENT: LEN MCDONALD

MYRA MASON
ZONING BOARD SECRETARY

REGULAR MEETING

MR. KANE: I'd like to call the February 9, 2004
meeting of the New Windsor Planning Board to order.

APPROVAL OF MINUTES DATED: JANUARY 26, 2004

MR. KANE: Motion to accept the minutes of January 26,
2004?

MR. RIVERA: So moved.

MR. REIS: Second it.

February 9, 2004

2

ROLL CALL

MR. REIS	AYE
MR. MINUTA	AYE
MR. RIVERA	AYE
MR. KANE	AYE

PRELIMINARY MEETINGS:

DONALD FASSBENDER (04-07)

MR. KANE: Request for 5.5 ft. rear yard setback (48-14, A(1b) for existing shed at 8 Musket Place in an R-4 zone.

Mr. Donald Fassbender appeared before the board for this proposal.

MR. FASSBENDER: First time doing this so--

MR. KANE: We in New Windsor, what we do at the preliminary hearings is to take a look at what you've got and ask you some questions. There will be the same thing at a public hearing, everything has to be done by law at a public hearing, so we want to give you an idea of what we're looking for. In a lot of towns, go you in cold, if you don't have the right answers, you lose. So tell us what you want to do.

MR. FASSBENDER: Well, the shed was there previous I just want to get it, I can't really move it, so I was just hoping to, I don't know.

MR. KANE: How long has the shed been in existence?

MR. FASSBENDER: Fifteen years.

MR. KANE: Any complaints formally or informally about the shed?

MR. FASSBENDER: No.

MR. KANE: Create any water hazards or runoffs with the building of the shed?

MR. FASSBENDER: No.

MR. KANE: Cut down any trees or substantial shrubbery?

MR. FASSBENDER: No.

MR. REIS: What brings you to the zoning board?

MR. FASSBENDER: I purchased the home three years ago and there's no violations found at the time, so the purchase went through. Well when the rates dropped, we refinanced a year later, wait a second, you've got a code violation.

MR. KANE: The banks will check that kind of stuff.

MR. FASSBENDER: We inherited this.

MR. REIS: Thank you.

MR. KANE: And you realize that even if it is approved through the zoning board that you would still have to pass all the building department's inspections and that kind of stuff?

MR. FASSBENDER: Yes.

MR. REIS: There's no complaints from your neighbors?

MR. FASSBENDER: No, they usually come over and swim in our pool.

MR. MINUTA: You mentioned that it couldn't be moved, does it have a footing underneath?

MR. FASSBENDER: Well, it's the plumbing for the pool, the heating and all that, the costs.

MR. KRIEGER: Not just moving the shed, move all the other stuff?

MR. FASSBENDER: Yes.

MR. KANE: It would be a financial hardship for you to move it at this point?

MR. FASSBENDER: Yes, if the plumbing wasn't there, we can pick it up and move it, all the plumbing and heating and all that is there.

MR. KANE: You feel that makes it safer for the pool to have all the equipment inside the building?

MR. FASSBENDER: Yes, same filter has been there for 17 years, never been replaced because it's been indoors.

MR. KANE: Building is also part of the fence for the security around the pool from the picture?

MR. FASSBENDER: Yes, that's a well kept shed, it's not really a shed.

MR. KANE: Good shape. Gentlemen?

MR. REIS: Accept a motion?

MR. KANE: Yes, I will.

MR. REIS: Make a motion that we set up Mr. Fassbender for his requested variance at 8 Musket Place for a public hearing.

MR. MINUTA: Second it.

ROLL CALL

MR. REIS	AYE
MR. MINUTA	AYE
MR. RIVERA	AYE
MR. KANE	AYE

MR. KANE: Here's what you have to do next, just follow

February 9, 2004

6

those questions. If you have any questions about it, give Myra a call at the office and she'll help you through it.

MOSHHIL INC. (04-09)

MR. KANE: Request for 3,902 square foot minimum lot area, 25 ft. minimum lot width, 35.6 front yard setback, 5 ft. side yard setback, 10.4 ft. rear yard setback, 4% floor area ratio and 4 spaces minimum parking required for retail building with caretaker's apartment all at 1144 Route 94 in an NC zone.

Michael Meth, Esq. appeared before the board for this proposal.

MR. BABCOCK: They're required to have 11 spaces per my calculation, they're providing 7, so they need a variance of 4.

MR. KANE: And this is for a retail building with a caretaker's apartment at 1144 Route 94 in an NC zone. Okay, sir and you are?

MR. METH: My name is Michael Meth and I represent Moshhil Inc.

MR. KANE: Tell us what you want to do.

MR. METH: Well, we're here, I don't know how much the board knows, we're here as a result of stipulation reached in court and we haven't got to the Town Board yet but we want to come here first and get the variance because there's no point to go to the planning board to get a site plan if we don't get the area variance. As part of the stipulation reached in court with if an area variance is granted that will settle a lawsuit currently pending. If it's not, we first have to go to a trial. That's why we're not incurring the expense of the planning board first. This is a non-conforming lot where there was a structure taken down by the Town and we feel that it was taken down incorrectly and at the time of the sale and what we're asking the board to do is just put up a building in the same footprint of the

building that was there before and that's why we're requesting the area variance. It's not self-created at all. If the old building was there, we would have in our opinion been able to renovate it, get it back to normal. But since the building was taken down, it's now a non-conforming lot again and we have to first start building, the stipulation in court limits what we can do with any site plan to the same footprint, the same setbacks, all the same square footage and everything of the original building that was there and it will just be newer.

MR. KANE: And you're sure these are the requirements that you need? For instance, if this gets passed and then everything goes ahead, you still have to go in front of the planning board and something changes there you need to come back before us that would be a whole new process.

MR. METH: Understood.

MR. MINUTA: Why was the building taken down?

MR. METH: It was a condemnation proceeding. We didn't know it was being taken down. We purchased the property at a foreclosure sale. My clients called me at 3 in the afternoon several weeks after the sale, he just happened to be driving by the property, there was a condemnation crew there, the Town's position there was notices sent and he never appeared to defend them. I myself know that I appeared several times to defend them and we were in the middle of a proceeding and the court for building code violations and then in the middle of the process, we got a court adjournment, and in the middle of the one court date to the next, the building was taken down before it was resolved. So they said it was unsafe. It was bought at a foreclosure sale. My client had plans to gut the place, it was a brick shell and it was going to be gutted on the inside and rebuilt new and before he had

a chance to do that it was taken down.

MR. KANE: The only problem I have with this whole thing in looking at it and just from a safety aspect is that one corner of the building is only four foot six inches off of Route 94. Can you assure us that any traffic heading in I guess that would be the southerly direction on 94 you're going to have, can you show me right here where an exit is going to be for the parking? You don't know that yet?

MR. METH: I haven't seen the traffic study, I know one was done but I assume it's where you just said.

MR. KANE: You're only 4.4 feet off the property line.

MR. METH: That's the other side of the building, right, well, that might be also something that in a traffic study mitigation as part of the planning board process they'll require to the, in other words, if it's, we're asking for a variance for, we're asking for five or six which would be inside.

MR. KANE: That's my main concern, obviously building on the same footprint and putting the building back up probably sounds like the right thing to do, but I do have a concern with that on 94.

MR. MINUTA: Is this site plan reflective of what was existing or--

MR. METH: I believe they used the same footprint but no, it's not what was existing, it's what they want to do now with the building. I don't think it was retail in the past but I'm not positive, I believe it was an apartment building.

MR. KANE: Because this looks like, I'm just trying to read it in my old age, that looks like 4 foot 7. Do you know what these little, is this standing, Mike, do

you know what they are up front there?

MR. BABCOCK: Apparently, it's what the old building was, these little pieces they were little jut-outs on the old building and I guess through the stipulation they want to put back the exact same footprint.

MR. KANE: With being set up for the planning board, I mean for a public hearing, I'd really like them to address that one that's sticking out on the end because if you pull that off then you're getting back out to like almost 8 feet or so depending on the width. I can't tell whether that's width.

MR. BABCOCK: It's 4 foot by 7 is the one that projects closer.

MR. KANE: So it's 4 coming out to the road so that would give you eight foot four inches, that's a heck of a lot better than 4 which I consider very dangerous.

MR. BABCOCK: It's 4 foot by 7 foot long.

MR. REIS: What is it?

MR. BABCOCK: It's part of the building.

MR. MINUTA: The minimum required lot area is 10,000, we have 6,000 provided the former use was apartments.

MR. METH: I believe, I'm going from memory three years back, I believe it was an apartment building, I know it wasn't retail.

MR. KANE: Supposed to be a single family home, it was being used as an apartment.

MR. MINUTA: Legally?

MR. KANE: Illegally, so it can go to a retail with a

caretaker in an NC zone.

MR. BABCOCK: All this legal and illegal use of the building I believe that it was a legal one family dwelling and it was converted to an illegal three family long before this applicant owned it.

MR. KANE: Then I guess it got in such disrepair, Town considered it dangerous and took it down.

MR. MINUTA: So then I would consider this then to be just residential at that point?

MR. BABCOCK: Yes.

MR. MINUTA: Commercial is allowed here?

MR. BABCOCK: It's NC.

MR. KANE: Part of the court proceeding didn't make this a continuation of a non-conforming building in there, that would be interesting.

MR. BABCOCK: I've never seen the court stipulation.

MR. KANE: Everything goes back to square one and they can put up a non-conforming building there.

MR. BABCOCK: I'm sure.

MR. KANE: This just cleans up all the legal aspects which we normally do.

MR. METH: Well, the court didn't address that, I don't want to say it did, the court just assumed that it was going to be something that was built in the footprint, we didn't, then in the court of claims, we didn't even address the non-conforming use, so the stipulation reads very clean, it's very short, just says as long as it's built in the same footprint with the same

requirements of the original building. Doesn't say same requirements. I have a copy of it if the board would like a copy for its files to review.

MR. KANE: Yes, if you could.

MR. METH: I can send a copy.

MR. KANE: You can bring it at the public hearing.

MR. METH: Make a copy for each member but it doesn't talk about whether it can be non-conforming.

MR. KANE: It would be good to have it in the file. The intent of the court is obvious to put it right back in but the request to bring that 4 foot footprint back to an eight foot and do away with the 4 foot 7 thing is kind of appropriate.

MR. METH: That might be a fire escape.

MR. KANE: I'd like to address, that's the only thing that worries me about this whole thing, it's something I'd like to fix while it's there and it has to do with the traffic and 94 is getting to be a busy road plus we have the school so we have more traffic on the road.

MR. METH: This lot goes under an overpass and the lot's right there so--

MR. KANE: What I would like addressed, see if we can do something with that. Any other questions?

MR. REIS: Can you help me out here, what's this?

MR. MINUTA: That's the actual setbacks, I'm assuming.

MR. BABCOCK: That triangle piece in the middle of the building that's where they're allowed to build, that would be the size of the building they would be allowed

to build.

MR. MINUTA: There's a piece that's 14 x 29, that's another building.

MR. BABCOCK: Fourteen by twenty-nine is the same building, yeah.

MR. KANE: But that's the old footprint.

MR. BABCOCK: Well, if you took the setbacks because the lot's a rectangle, that's where they'd be allowed to build.

MR. REIS: The triangle would be the acceptable area?

MR. BABCOCK: That's correct.

MR. METH: The answer to your question is yes and you guys, yes to both.

MR. KANE: We do that.

MR. MINUTA: The court ruled in your favor on this with a footprint?

MR. METH: Well, there was no ruling yet. What I can't remember, Paul Goldman represents the Town of New Windsor, I guess the insurance company of the Town of New Windsor and he entered into a stipulation, right now, the court case isn't over, right now the court case is kind of on pause and with the stipulation says cause we can't build unless we get a use variance as you can see because it's unbuildable.

MR. KRIEGER: An area variance.

MR. METH: Unless you want to put a flag pole but the court case in that court says the stipulation says if we get the variance and we can build on the same

footprint, the case is over. And if we can't, we have a conference date set for the end of March to go back and tell the judge that we couldn't get a variance and the property's unbuildable now and what do we do and then go forward with our case, which is a wrongful condemnation case, cause if the old building was there, we wouldn't be here, we'd be able to build it.

MR. MINUTA: Why was it condemned in the first place?

MR. METH: It was a foreclosure sale, so a lot of it happened before we purchased it. If my memory serves, as soon as we purchased it, I showed up at the court in response to a building code violation and we started, we talked to the building inspector and I have a really thick file on that court case and he gave us a list of things to do, board it up being the first one and stuff like that, what we need to do to get it into compliance. We got an adjournment from the judge to go and fight with the building inspector, we don't want to do this, we'll do this, in the meantime, it got taken down. And it happened with a matter of from the purchase to the court date to when it got taken down was I believe like three weeks, we just happened to come in in the middle of the movie when it was already happening and the judge let us stop it but the communications between the court, the Town attorneys and the ones who called the people to come demolish it there was none. So the right hand didn't know what the left was doing. And it was taken down before we can stop it. I tried to stop it as the crews got there, I put a couple of calls in but, you know, it was in motion, it was a freight train rolling down and it was done before the afternoon was over so and then now three years later, we're still in the court of claims trying to fight about what it was worth before the building was taken down now because of this exact problem that we can't just rebuild so--

MR. KANE: Any other questions?

MR. REIS: Accept a motion?

MR. KANE: Yes, I will.

MR. REIS: Make a motion that we set up Moshhil Inc.
for the requested variances at 1144 Route 94.

MR. MINUTA: Second it.

ROLL CALL

MR. REIS	AYE
MR. MINUTA	AYE
MR. RIVERA	AYE
MR. KANE	AYE

STRATEGIC HOMES, LLC (04-10)

Mr. Michael Reis appeared before the board for this proposal.

MR. REIS: My name is Michael Reis. Mr. Sabini, who is going to be the builder on the property called me about an hour and a half ago, asked me if I can help him out with this.

MR. KANE: So you're going to present at the preliminary hearing, Mike?

MR. REIS: I'm going to present the preliminary hearing on behalf of the--

MR. KANE: Let me just clear this up first though and in presenting this, do you have any, are you going--

MR. REIS: I'm going to recuse myself except for just presenting it, I will be recusing myself from the public hearing as well. Our company happens to be involved with the sale, so I would be recusing myself whether I was presenting this or not.

MR. KANE: Thank you, Michael.

MR. REIS: This lot is an existing lot on Sycamore Drive in Beaver Dam Lake community, it's 100 foot wide and 200 foot deep creating a shortfall of 1,790 square foot for a single family home. There's sewer on the street, private drilled well and that's all there is.

MR. KANE: Is that the same size, it looks to be but the same size lot as the other lots in the neighborhood?

MR. REIS: Very much the same.

MR. BABCOCK: Yes, it is and the whole purpose of them

being here is because they do not have Town water. If they had Town water, they won't be here. When they first contacted my office, Mr. Sabini apparently he was told that this was a buildable lot to go ahead and purchase it and whatever and I happened to see him in the hall when he told me about it because I happen to live in the area and that's when we realized that it doesn't have water and he needs to come here to get that relief.

MR. MINUTA: Is it currently vacant?

MR. REIS: Just wooded property, Joe, correct.

MR. KANE: Creating water hazards or runoffs with the building of it?

MR. REIS: It's a fairly slightly sloped lot, fairly level, just be clearing the area just for the foundation of the home and the driveway.

MR. KANE: You'll be cutting down some trees and vegetation but not a substantial amount?

MR. REIS: No, not a substantial amount, as you can see from the pictures, it's a not a dense but fairly heavily wooded area.

MR. MINUTA: Will this lot be able to meet the required setbacks for well and sanitary?

MR. REIS: It's acceptable. That's the road views are north and south from the lot.

MR. KANE: And the only variance they'll need the minimum lot area?

MR. REIS: That's correct.

MR. MINUTA: Accept a motion?

MR. KANE: Yes, I will.

MR. MINUTA: I make a motion that we forward Strategic Homes, LLC to a public hearing for request of 1,790 square foot minimum lot area for proposed single family house on Sycamore Drive in an R-4 zone.

MR. RIVERA: Second it.

ROLL CALL

MR. REIS	ABSTAIN
MR. MINUTA	AYE
MR. RIVERA	AYE
MR. KANE	AYE

SANDRA WELCH (PIRNIK) (04-11)

Mr. Sandy Welch and Mr. Robert Engenito appeared before the board for this proposal.

MR. KANE: Tell us what you want to do.

MR. WELCH: I'd like to see if we can have the piece of property put into new usage, it doesn't meet the requirements, it was an existing lot, we had it surveyed, I don't know if you have a copy of this.

MR. KANE: Yes, basically, there's an existing house on this side by today's standards, it doesn't meet the requirements.

MR. KANE: One acre building out there?

MR. BABCOCK: Yes.

MR. ENGENITO: This is a picture of my house next door.

MR. KANE: We've got those.

MR. MINUTA: Has this property recently been subdivided from another piece?

MR. ENGENITO: No, actually, it's been there that way for a long time. My in-laws own the property next to my house, I bought their house and it's exactly the same size lot as what I own, so they live in Florida, they don't want the property anymore, I'm not buying it, it's just too expensive for me and then they just want to get rid of the property.

MR. KANE: Do you know how long this property has been divided like that?

MR. ENGENITO: I think since they bought it in '62 it's always been two separate lots.

MR. KANE: Has there been any current changes in the zoning out in that area?

MR. BABCOCK: Yes, there has actually sometime this year, October of this year, I don't know exact date there would be a 2 acre requirement.

MR. KANE: What about in the past, go back, do you remember?

MR. BABCOCK: No, it's been one acre forever because the old requirements was regardless of today's, regardless of water or sewer back then it was water and sewer, they do not have water or sewer here, they, actually, there's water in the road now.

MR. ENGINITO: And there's a spout hooked up to that piece of property.

MR. BABCOCK: They do have Town water here and I'm not so sure they're not going to be getting Town sewer very soon.

MR. KANE: But it's looking to increase. How many other homes in that particular area are on that size of a piece of property, half acre approximate, do you know?

MR. ENGENITO: Well, the guy on the other side of me is an acre so my house--

MR. BABCOCK: Did you see this, Mr. Chairman?

MR. MINUTA: Tax map shows majority are about an acre.

MR. REIS: You've got about ten lots within 200 yards of their same size.

MR. KANE: Cause while the other request doesn't seem

substantial, the 22,000 square feet is almost half so that's a substantial request.

MR. WELCH: Of today's standards.

MR. KANE: Yeah. Are you going to be creating any water hazards or runoffs with the building of the home?

MR. WELCH: No, it's a relatively flat piece of property, it would require septic.

MR. KANE: Cutting down trees, substantial vegetation?

MR. WELCH: There actually is no trees but the row of pine trees, they're between the two houses which would stay in effect that would buy privacy to the existing house.

MR. KANE: You're to the left of that one?

MR. ENGENITO: Right.

MR. WELCH: That's basically the field where it would sit which is basically farm field.

MR. KANE: Gentlemen, do you have any other questions?

MR. MINUTA: No.

MR. KANE: Steve?

MR. RIVERA: Accept a motion?

MR. KANE: I'll accept a motion.

MR. RIVERA: I move we set up Sandra Welch Pirnik for the requested 22,111 foot minimum lot area, 25 foot minimum lot width, five foot/two foot side yard setback and 7 foot total side yard setback for proposed single-family house on Mt. Airy Road.

MR. REIS: Second it.

ROLL CALL

MR. REIS	AYE
MR. MINUTA	AYE
MR. RIVERA	AYE
MR. KANE	AYE

MR. REIS: Just for the record, Mr. Welch, your name is Sandy?

MR. WELCH: My wife is Sandra and I'm Sandy.

PUBLIC HEARINGS:

NEW WINDSOR EQUIPMENT RENTAL (04-08)

Mr. Jerry Argenio appeared before the board for this proposal.

MR. KANE: Request for use variance to permit storage and handling of aggregate products in an R-4 zone (adjacent to PI zone) at 14 Argenio Drive.

I will ask looking at the empty chairs if there's anybody here for this hearing. Seeing as there is not, come up on tell us what you want to do, sir.

MR. ARGENIO: Can I bring the easel over?

MR. KANE: Sure. You can proceed.

MR. ARGENIO: Jerry Argenio, Jr., for New Windsor Equipment Rental. Mr. Chairman, we have kind of a unique set of circumstances here, I'll start from the beginning, I went through the whole history last time and if I skip something, please stop me. Our property is located approximately across the street from Gallagher's on Route 32, it's the industrial facility, the blacktop plants, concrete plant, that operation exists up in this area here. The property in question is this 2.35 acres in the rear of what's known as Hudson Valley Asphalt where we make bituminous concrete. Ducktown is in the back here separated from our property by two ponds. I don't know if anybody's familiar with that area. And just to give you a brief history not to kill you with details, in the course of our operation making blacktop sometimes there's surplus blacktop, sometimes aggregates left over at the end of the day and for years when we first opened the plants up, we'd dispose of the products, we'd landfill them or load them out at some point in time. Well, with the natural resources being used up in the area, i.e., gravel or crushed bedrock, we found a market in taking

these materials, processing them together and making an Item 4 product, if you will, sub-base for a driveway or a parking lot and we sell that product. It's a good use, we're not wasting the product, it works for us, we don't make a lot of money on it but it saves a lot of motion. So over the years, our operation has expanded and we're doing more and more of this quote unquote recycling, I'll use that term for lack of a better term. So we're cramped with space at this point in time. Behind us the Town of New Windsor owns this large parcel here which is approximately 32 or 35 acres, some such thing of that nature. So we approached the Town Board and the Town Supervisor in and expressed an interest in purchasing a piece of property back here or renting it, whatever arrangement they'd like. This is now dead land with the exception of this yellow and this pink are easements, water and sewer easements going through the property, so really it's of no use for anything, you can't put houses on it or anything like that because it's littered with these easements all through it. So the Town Board and Supervisor Meyers opted to lease the property to us and the purpose of the lease, Mr. Chairman, is we store our finished product on it, once we process these aggregates, they sit back there in a big pile approximately where the bubble is drawn on the plan, until such time as somebody comes in with a truck and we sell them, we load them up and they go on their merry way or we deliver the product to homeowners, commercial users.

So we leased the property about three years ago from the Town, always expressing an interest to purchase the property. When we did that, we went back there and we cleared some trees, we did some filling and grading and we coated the property with a layer of Item 4, this recycled product. We purchased a loader because we need a second loader to feed the operation, we can't use the loader from the blacktop plant because he's busy at the plant, couple of trucks that make deliveries and it's going rather well. The intent was

on our end to buy the property. Now, what the Town was concerned with and Supervisor Meyers was that us occupying this land being some burden on anybody back here, that's why they lease it to us rather than perform an outright sale and then realize that they have a problem back there. Well, when we entered into the lease, we didn't realize that the R-4 zone line, R-4/PI zone line goes right through a line about where I'm running my finger so we're back here on this R-4 zone now, there's nothing back here with the exception of some scrub woods, these two ponds and then as I said on the other side of the woods is Ducktown. Well, after three years, no complaints, no problems, no issues, we approached Supervisor Meyers and the Town Board and said look, can we buy the property, no complaints that I'm aware of, Mike, I'm sure we would have gotten a phone call if there were any complaints for noise or unsightly things going on back there.

Well, the Town reacted in the affirmative, yes, we're interested in selling the property to you. To that end, actually have a contract of sale here that got drawn up but during the procedures of drawing the Contract of Sale up at this point the Town attorney is looking at this very close, our attorney is looking at it very close, we discovered that it's in an R-4 zone. Well, that's a problem. So now we have this capital investment we've made on improving this piece of property, equipment that we bought all in good faith, conducting a clean operation in conformance with Town Code and DEC and all the other agencies that monitor an operation of our nature, now we have a problem. So the Town wants to put the property on the tax rolls, we want to buy it but we're looking for this use variance. Mr. Chairman, if I could, the photos there that you have I noted on the top here the views if you look at the map here, look at the first one, you're looking at view number 1, that's a photograph taken from the top of the pile looking back towards the kind folks at Ducktown, there would be a pond here, a pond here and this little trail that goes in between the ponds back

to the houses in Ducktown, the distance from the pile to the nearest home is about 800 feet, it's difficult to measure across a pond but--

MR. KANE: Any type of odor or smell?

MR. ARGENIO: Nothing, it's static materials. Unfortunately, there's snow there but all you'd be looking at would be a pile of aggregate, Item 4 and then--

MR. KANE: Do you guys have the same pictures?

MR. MINUTA: Yes, so this is the aggregate?

MR. ARGENIO: That photo's taken from the Town's property looking at our pile of aggregate, which is sitting on the leased parcel. Now, if you go to view number 1, that's me standing on top of the pile looking towards Ducktown, this is a pond here, a pond here and this is a little trail about 18 or 19 foot wide that the Town has used over the years. These easements here, this is a reserve well house in the case we have have a problem in the Town with water, they can activate this well and there's sewer going through there as well. So the purpose of that road that I just pointed out to you was so the Town vehicles can come in and service the pumphouse or service the manholes, whatever the case may be. But as I said, because this property is littered with these easements, it's of no use in an R-4 zone and as you can see, the property, the relocation of the property line falls short of the easements so we don't place any burden on the Town if they ever have to come in and service this pumphouse or activate the pumphouse or service any of the manholes in this area.

MR. KANE: Can you give for the record some examples of what can be built in an R-4 zone?

MR. BABCOCK: Single family homes, that's it.

MR. KANE: And it's your contention that the property in the location that it's in right now can never be used to build single family homes on it?

MR. ARGENIO: That's correct and that's based on as I said primarily because of the easements.

MR. KANE: So therefore monetarily there's no way anybody can sell that property for a use that it's zoned for?

MR. ARGENIO: Not in my opinion, Mr. Chairman.

MR. KRIEGER: That property is cut off from the major roadway by your establishment on one side and Town's land on the other?

MR. ARGENIO: On our side it's been cut off for 25 years.

MR. BABCOCK: It's got no road frontage.

MR. KRIEGER: No way that it can get any road frontage?

MR. ARGENIO: That's correct. See what would make more sense and again, I'm speculating, Mr. Chairman, but the zone line fell into place at some point in time many many, years ago and I'm quite sure that that zone line and again, bear with me, I'm speculating, I'm quite sure that zone line was arbitrarily placed through here when this was woods and that was woods. But now at this point, it makes a lot more sense in the fact that actually a geographic boundary caused by these ponds, the course of water is in this direction so, I mean, it actually makes sense that this side should be PI and this side should be R-4.

MR. KANE: Okay, cover a couple other bases, you have

been operating there for three years, you have created no water hazards or runoffs by that operation?

MR. ARGENIO: We have created no additional water hazards, no addition runoff.

MR. KANE: And you didn't cut down any substantial trees or substantial vegetation?

MR. ARGENIO: We did cut down some trees but it was relatively insignificant, it was very, very sparsely wooded.

MR. KANE: And even though the hardship is quote unquote self-created, it's really the best use for the property at this time and there's no other use for it?

MR. ARGENIO: Truly.

MR. KRIEGER: I'm not sure legally it would be determined to be self-created because they didn't put the zoning line in, they didn't put the easements in that bar it from use in the other, with the other R-4 properties, specifically being the Ducktown properties, so it's not really self-created.

MR. KANE: It feel into an area where it just can't be used because the building around that area?

MR. KRIEGER: Yes and because of the Town's use of the adjacent property.

MR. KANE: For the record, I will open and close the public hearing seeing as there's nobody here.

MR. ARGENIO: Mr. Chairman, additionally, on the public hearing, no fewer than 150 notices were sent out, no fewer than 150.

MR. KANE: And I can see in Myra's files we've not not

gotten anything back regarding it. And obviously, there's nobody in attendance for it so we cover that base right there.

MR. KRIEGER: Considering it's adjacent to an active community if there was any problem, I would have heard.

MR. KANE: Knowing Ducktown, they would have been here.

MR. REIS: Mr. Argenio, is there any anticipated containment around the perimeter of the property to contain aggregate?

MR. ARGENIO: What do you mean?

MR. REIS: Some kind of abutment or fencing?

MR. KANE: Item 4 doesn't run.

MR. REIS: To contain so you don't spread beyond the 2.3 acres.

MR. ARGENIO: No, sir, there's no physical containment that--

MR. KANE: But do you have within the use of that property do you have a decent amount of buffer area from where you're building up the aggregate to wherever the back line is so you're not overrunning onto a different part of the property?

MR. ARGENIO: Yes, we do.

MR. KANE: Ten feet from the back, 15 feet approximately whatever so that there's no overflow.

MR. ARGENIO: We do have a buffer, we have a buffer of about ten feet, I don't think we've checked it in about a year but what happens is as you create this aggregate, we're always feeding, loading/selling the

aggregate from the front of the pile, so the back of the pile tends to never move and if we do get to the back of the pile, shame on us because we're short inventory at that point. So the back of the pile lands and it pretty much stays right where it is.

MR. KANE: The aggregate that you're building, that's not likely to slide down or flow in any way onto the property behind?

MR. ARGENIO: No, it's not unstable.

MR. RIVERA: Rear of the pile faces the pond?

MR. ARGENIO: That's correct. I think I have a shot of that in there, a photo of it.

MR. RIVERA: I'm just looking from here.

MR. ARGENIO: Yes, the rear of the pile faces the pond.

MR. RIVERA: So contamination of the pond?

MR. ARGENIO: It's gravel.

MR. KANE: How many feet from the ponds are you?

MR. ARGENIO: About 300 feet.

MR. KRIEGER: If the pile were to get any bigger, it would get bigger towards your property?

MR. ARGENIO: Expand towards our property, correct.

MR. MINUTA: Is this subject to environmental form?

MR. KRIEGER: Short form EAF, yes, he needs to file a short form EAF.

MR. MINUTA: And would that be our position to declare

a negative declaration on that or positive declaration depending on the findings?

MR. KANE: I think we should take--

MR. KRIEGER: Yes, you have to declare negative dec or positive dec, whichever you want, but you can limit the review to this proceeding only.

MR. ARGENIO: I believe, Mr. Chairman, that we also have to appear in front of the planning board subsequent to this, the results of this hearing for the lot line relocation and--

MR. KANE: So we'll limit it to this proceeding only, all right.

MR. MINUTA: Are there any environmental impacts based on the aggregate that you're using that would impact the soils or ground water, things of that nature?

MR. ARGENIO: No, there are none that I'm aware of.

MR. KRIEGER: Those ponds in there, that's an alternate area, alternate water supply for the Town of New Windsor, so they have been monitoring it while you have been occupying the property?

MR. ARGENIO: I don't know the last time that that alternate water supply has been used that's currently located on the Town's property. I asked Mr. McGoeys about that several weeks ago, I bumped into him in Myra's office when I gave Myra the envelopes for the public hearing and he said they haven't used that well in years now. I don't know what that means, if that means five years or 35 years, but again, that's on the Town's property.

MR. KANE: And you aren't producing any type of a runoff to there that you're aware of?

MR. ARGENIO: No.

MR. KANE: So we need a motion, Joe, to find a negative declaration, declare a negative declaration.

MR. MINUTA: Okay, Mr. Chairman, will you accept a motion to declare negative declaration for this property subject to this hearing?

MR. KANE: Yes, I will.

MR. REIS: Second it.

ROLL CALL

MR. REIS	AYE
MR. MINUTA	AYE
MR. RIVERA	AYE
MR. KANE	AYE

MR. KANE: Do you gentlemen have any other questions at this time?

MR. RIVERA: No.

MR. KANE: Accept a motion.

MR. MINUTA: Accept a motion that we grant the requested use variance to permit storage and handling of aggregate products in an R-4 zone adjacent to the PI zone at 14 Argenio Drive.

MR. RIVERA: Second it.

ROLL CALL

MR. REIS	AYE
MR. MINUTA	AYE
MR. RIVERA	AYE

MR. KANE AYE

MR. KANE: Motion to adjourn?

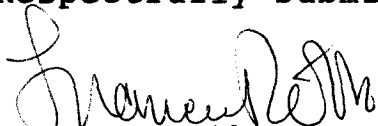
MR. MINUTA: So moved.

MR. REIS: Second it.

ROLL CALL

MR. REIS	AYE
MR. MINUTA	AYE
MR. RIVERA	AYE
MR. KANE	AYE

Respectfully Submitted By:


Frances Roth
Stenographer

2/11/04